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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,509	09/13/2000	Nurith Shaklai	SHAKLAI=1	2576

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

5

Office Action Summary	Application No. 09/661,509	Applicant(s) SHAKLAI, NURITH	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/11/05
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

It is noted that claims 11-15 contain obvious typographical errors in that they are dependent on cancelled claims 1 and 3. It is assumed that the intent was to have the claims that are dependent on claim 1, actually dependent on claim 10, and the claims that are dependent on claim 3, actually dependent on claim 13. To expedite prosecution, claims 11-15 will therefore be construed as dependent on claims 10, 10, 10, 13, 13, and 13, respectively.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-13, 15, 16, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al (JP 05003752).

In regard to claim 10, Kobayashi et al discloses a method comprising exposing raw meat to an atmosphere consisting essentially of carbon monoxide so as to cause penetration of the carbon monoxide in the meat, and maintaining the meat in a sealed container. Claim 10 recites that the carbon monoxide is caused to penetrate throughout the meat. Since Kobayashi discloses that the absorption by the meat is 5 l. per 100 kg meat and thus reads on applicants disclosed and recited range of 5 to 100%, then it would appear that Kobayashi et al inherently causes penetration of the carbon monoxide throughout the meat. Also, since the meat has carbon monoxide absorbed therein, the method of Kobayashi et al inherently inhibits pathogen growth of the pathogens recited in claim 10 and maintains color and freshness of the meat. In regard

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to claims 11 and 12, Kobayashi et al meat and poultry. In regard to claim 15, the volume of carbon monoxide would inherently be maintained in the meat during storage in the sealed container since there is no driving force to remove it and it is bound up. In regard to claim 16, Kobayashi et al discloses raw meat packed in a sealed container which meat contains the recited percentage as noted above. Claims 18 and 19 are rejected for the reasons given above in regard to claims 11 and 12. Claim 20, a product by process claim is rejected for the reasons given above in regard to claims 10, 13 and 16.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al (JP 05003752), in view of Morishita (JP 63-160564), Makino (JP 5-308923), Iimura et al (JP 61-141863), Tokyo Gas Chem (JP 6-169730), Hanada (JP 5-317000), Tokyo Reinetsu, Sangyo (JP 5-316939), Clark et al (Can. Inst. Food Science), Brewer et al (J. Food Quality), Hood (4,089,983), Hood (4,001,446), Besser (J. Food Science), and Koch et al (3,459,117).

In regard to claims 14 and 17 which recite that the meat contains a volume of carbon monoxide of 30 ml for 100 g of treated meat and that the volume of carbon monoxide contained within the meat is 30% of the weight of the meat, respectively, the particular amount of gas absorbed into the meat is seen to have been an obvious routine determination and an obvious result effective variable. All of the secondary art,

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including Morishita through Koch et al disclose the exposure of meat to carbon monoxide which purposefully or inherently will be absorbed into the meat.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 10-15 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-3 of prior U.S. Patent No. 6,042,859. This is a double patenting rejection. Claims 1-3 of 6,042,859 are readable on pending claims 10-15 and would inherently inhibit pathogen growth in meat and would inherently read on the volume ranges recited in the pending claims.

Claims 16-20 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,270,829. This is a double patenting rejection. Claim 1 of 6,270,829 is readable on pending claims 16-20 and would inherently read on the recited volume range.

The remainder of the references cited on the PTO 892 form are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-

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272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
7/18/06